

REMARKS

A. Claim Rejections Under 35 U.S.C. § 103

1. Rejection of Claims 7-12

The Office Action rejects claims 7-12 of the instant invention as being unpatentable over Latshaw (U.S. Pat. No. 6,164,425) in view of Tiramani (U.S. Pat. No. 6,497,311) and further in view of Metten (U.S. Pat. No. 6,164,425), or Kjose (U.S. Pat. No. 4,657,135).

The claim amendments contained herein remove this obviousness argument. These amendments find support in the specification at ¶¶ 022, 023, 024, 025, 026, 027, 029 and FIGS. 1-4.

The inclusion of the limitation "wherein the extendable support length is less than a distance from the pivot location to an axis of the two edge wheels," combined with the limitation that the pivot point be "fixed," and the limitation that the "locking mechanism that locks the extendable support in an extended position angle of substantially 90 degrees" in Claim 7, necessitates the formation of a non-equilateral, triangular-based support in which one leg of this imaginary triangle (the extendable support) is shorter than the other (a distance between the fixed pivot point and the travel case base), and both imaginary triangle legs are shorter than the triangle's hypotenuse (the distance along the ground between the caster wheels and the base wheels).

Consideration of the geometry involved reveals that it is impractical in a rolling travel case to have a pivoted extendable support whose length is greater than the length from a fixed pivot point to an axis of the edge wheels, as the support would extend below the bottom edge of the case. In such a construction, the extendable support's wheels

would prevent the edge wheels, and in fact the case's edge itself, from touching the ground when the support was in the folded storage position.

Therefore, the prior art has uniformly made the extendable support legs no longer than the distance from a fixed pivot point to an edge wheel axis, or a case bottom; and simultaneously, made the angle formed by the extendable support and the case base wall less than 90 degrees; in order to maintain the prior art cases in a more upright position.

This can be clearly seen in all of the relevant references cited by the Office Action: Latshaw at FIG. 8, Tiramani at FIG. 1, and Kjose at FIG. 3. (Metten does not have a pivoting support). None of the prior art disclosing an extendable support disclose transportation at less than 45 degree to the horizontal (Kjose transports with the extended support retracted, and Metten as noted, does not have a pivoting support; and as the Office Action points out, Liang has a sliding, rather than a fixed pivoting attachment for the extended support. Even still, the extended support must be no greater than the distance form the pivot point to the case edge in the retracted position).

These structural limitations, clearly not seen in any of the references cited by the Office Action, cause the case of the instant invention to be maintained at an optimal angle to be pulled, i.e., less than 45 degrees from the horizontal. One skilled in the art will see that the substantially orthogonal fixation of the instant invention's extended support to the case during transport contributes to a stronger joint, especially compared to a movable joint such as found in the reference Liang, which is liable to move or slip during use. In particular, the primary reference of Latshaw has neither a substantially orthogonal attachment of the extended support, nor a fixed pivot point.

Therefore, in light of the present amendments, the Office Action has not established a prima facie case for obviousness, as it is well recognized that references which teach away from a claimed invention cannot serve as a basis for obviousness. U.S. v. Adams, 383 U.S. 39 (1966).

It is also improper to cite Latshaw for an obviousness rejection, as, post amendment, the examination must consider all of the claims limitations in applying Latshaw, for example, by considering Latshaw's sliding pivotable attachment and lack of orthogonal relationship to the case side in the fixed position. In re Fine, 873 F.2d 1071 (Fed. Cir. 1998).

As noted above, Metten and Kjose are inapt references, as Metten lacks a pivoting support and Kjose is designed so that the extended support is used only at rest, and not during transport, and therefore does not meet the limitation of having a "wheeled end of the support;" as is required by Claim 7, part (d), of the instant invention.

Therefore, given the amendments contained herein, the references previously cited cannot support a finding of obviousness, and this rejection should be rescinded.

CONCLUSION

In view of the above, it is submitted that the claims are in condition for allowance. Allowance of all claims at an early date and issuance is solicited. If any question should arise with respect to the above remarks, or if it would in any way expedite the prosecution of this case, applicant's attorney would appreciate a telephone call at 614-228-6280 ext. 18.

Respectfully submitted,

April 8, 2008
Date

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